

Federal Court



Cour fédérale

Date: 20211214

Docket: IMM-792-20

Citation: 2021 FC 1414

Ottawa, Ontario, December 14, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

**ARAKSAN ISMAEL IBRAHIM**

**Applicant**

and

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. OVERVIEW

[1] Araksan Ismael Ibrahim, the applicant, is a citizen of Djibouti. After entering Canada irregularly from the United States in November 2016, she made a claim for refugee protection. The claim was based on the applicant’s fear of persecution because of her perceived membership in an opposition political party, the *Mouvement pour le Renouveau Démocratique et le Développement* (“MRD”), and because of her membership in the Samaron clan.

[2] In a decision dated April 12, 2017, the Refugee Protection Division (“RPD”) of the Immigration and Refugee Board of Canada (“IRB”) rejected the claim on credibility grounds. The applicant appealed this decision to the Refugee Appeal Division (“RAD”) of the IRB. The RAD dismissed the appeal. However, on July 16, 2019, the applicant’s application for judicial review of the RAD’s decision was allowed on consent and the matter was remitted for redetermination. In a decision dated January 10, 2020, the RAD dismissed the appeal again.

[3] The applicant now applies for judicial review of this decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”). She contends that the RAD’s determination is unreasonable. For the reasons that follow, I agree. This application must, therefore, be allowed and the matter remitted for redetermination once again.

## II. BACKGROUND

[4] The applicant was born in Djibouti in March 1989. She graduated from university with a degree in journalism in September 2013.

[5] Central to the narrative that underlies the claim for protection is the applicant’s claim that she worked for *Radio Télévision de Djibouti* (“RTD”). According to the applicant, in March 2012 (while she was still in university) she began working in the music department as a “presenter of songs.” (An RTD identification card from this time identifies the applicant as an “animatrice” or “host”.) In May 2014, she was transferred to the position of receptionist, which she considered to be a demotion. The applicant alleges that, as a receptionist, she was subjected to insults because of her clan membership. She worked in this position until October 2015, when

she became a radio newsreader. According to the applicant's Basis of Claim ("BOC") narrative, while she "tried to maintain some form of independence as a newsreader and journalist," she was "constantly being psychologically abused by the directors of the company." She believed this was because of the perceived inferiority of her clan.

[6] The applicant alleges that she was suspended from her job as newsreader in August 2016 because her employer began to suspect that she was a member of the MRD after she raised questions about two news reports relating to the MRD. The first time she questioned the reporting was on May 21, 2016. The second time was on July 28, 2016. After the second incident, she was summoned to a meeting with her supervisors where she was sexually abused, insulted and suspended from her employment.

[7] According to the applicant, on August 5, 2016, shortly after she was suspended by RTD, she was arrested by the police on suspicion that she was spying for the MRD. She was detained for a month, during which time she was sexually and physically assaulted. She was released on September 5, 2016, after her father paid a bribe.

[8] After being released from custody, the applicant hid at her uncle's home. She also got married, a fact she kept secret from her family. The applicant testified that she was ashamed about what had happened to her in the prison. As she put it, a woman being raped "is shame in our tradition." She had not told her family what had happened to her. As well, she feared she might be pregnant because of what had happened when she was detained. (In her BOC narrative completed in December 2016, the applicant stated that she learned in November 2016 that she

“had become pregnant from my now husband.” At the RPD hearing in April 2017, the applicant testified that she wrote this because she hoped it was true. She still did not know if it was true or if she had become pregnant because of the rape in detention.) After obtaining a visitor’s visa for the United States, the applicant travelled to Washington, D.C., arriving there on November 4, 2016. The applicant was apprehended on or about November 27, 2016, near Emerson, Manitoba attempting to cross the Canada/United States border on foot. She then made a claim for refugee protection.

[9] The applicant’s claim was heard by the RPD on April 6, 2017. It was rejected in a decision dated April 12, 2017. In summary, the RPD found as follows:

- The applicant had established her personal identity.
- The fact that the applicant did not bring her supporting documents with her when she left the United States for Canada and, once she obtained them, provided them late to the RPD adversely affected the applicant’s credibility.
- For several reasons, the RPD was not satisfied that the applicant had worked at RTD:
  - The applicant could not provide the municipal address of RTD despite claiming to have worked there for over four years.
  - When asked about her duties as a newsreader, the applicant simply stated that every day she would be given a script and would read the news for an hour. She would be at the station for five hours a day “did not [do] anything else” except read over her “papers” and then present them. The RPD found that the applicant

gave an “evasive” account of her duties and could not provide “spontaneous and detailed testimony” relating to her job.

- The information on the employee identification cards the applicant submitted contradicted her own account of her employment. For example, a card issued in December 2014 and valid until December 2015 identified the applicant as a “*journaliste*” when, according to the applicant, she was still a receptionist when the card was issued.
- The RPD also drew an adverse inference about the credibility of the applicant’s account of her employment from the fact that while she testified that her father had also worked as a technician at RTD for 20 years and that he had been suspended shortly after she was, she did not include this material fact in her BOC narrative.
- The RPD gave no weight to what the applicant claimed was a pay stub from RTD (a “*Bulletin de Paye*”) because of several discrepancies on the face of the document. In the latter regard, the RPD noted the following: “I did not advance these concerns to the claimants [*sic*] at the time of her hearing as this information was not only known to the claimant, she herself supplied the documents, and the duty of fairness does not require the claimant be confronted with information which she herself supplied [footnote omitted].”
- In sum, the RPD placed “no positive weight on the employment identity cards, the pay stub or photographs in terms of establishing any of her allegations, as I determined the claimant to be not a credible or trustworthy witness.”

- In addition, the applicant provided “evasive and inconsistent information” in her immigration records (including the forms she completed and her Port of Entry (“POE”) interviews) and her BOC narrative. The RPD did not accept the applicant’s explanation that the discrepancies were due to mistakes by the person who had assisted her in completing her immigration forms or were due to interpretation errors at the POE.
- The applicant had given inconsistent accounts of why she had married in secret after she was released from detention.
- The applicant did not seek medical or psychological assistance for the sexual assault she claimed to have suffered while in detention, nor did she produce a marriage certificate. The RPD determined that her failure to produce evidence corroborating “major events” in her life “further undermined her credibility.” The RPD continued: “Absent a reasonable explanation for the lack of corroborative evidence from a physician or psychologist or evidence from her current husband supporting their marriage (by way of a marriage certificate or support letter) in light of the other credibility concerns surround[ing] her detention and perceived political membership, I draw significant negative inferences as to the claimant’s credibility.”
- Since the applicant was found to be not credible with respect to the central allegation in her claim, the RPD also disbelieved her allegation that she belongs to the Samaron clan.

[10] In sum, the RPD found that the applicant was not a credible witness and was not truthful about her employment, her tribal membership, her arrest or her the perception that she was an MRD supporter. Accordingly, the RPD rejected the claim for protection.

### III. DECISION UNDER REVIEW

[11] On her appeal to the RAD, the applicant took issue with the RPD's adverse credibility findings in several respects. As well, the applicant tendered two documents as new evidence supporting her appeal. In the decision now under review, the RAD admitted both.

[12] One of the documents was an affidavit sworn on May 8, 2017, from the individual who had provided interpretation for the applicant and assisted her in completing her BOC narrative after she had reached Toronto. The purpose of the affidavit was to establish that there are differences between the Djibouti Somali dialect (the applicant's language) and the South Somali dialect (the language of the interpreter) in order to support the applicant's argument on appeal that apparent discrepancies in the applicant's accounts may have been due to interpretation errors when she first submitted her papers in Canada.

[13] The other document was a letter (in French) dated February 22, 2018, from the applicant's husband's mother. She wrote that, after the applicant fled the country, the police had taken legal action against her son ("*la police a entamé des poursuites à l'encontre de mon fils*"). As a result, he had gone into hiding and she had no information as to his whereabouts.

[14] With respect to the merits of the appeal, the RAD agreed with the applicant that the RPD had erred in two respects. First, in light of the fresh evidence concerning the applicant's dialect, the RPD had erred in relying on the applicant's statements at the POE because they were made under difficult conditions and without proper interpretation. Second, the RAD also agreed that

the RPD had erred in drawing an adverse inference from the fact that the applicant had not brought her documents with her when she left the United States for Canada.

[15] Despite these errors, the RAD upheld the RPD's determination. It did so on four main grounds that can be summarized as follows:

[16] First, the RAD agreed with the RPD that the applicant was unable to describe her duties as a newsreader in any detail. While the term "evasive" may not have been the most accurate term for the RPD to use, the RAD agreed that the applicant's "very basic" testimony regarding her work "is not commensurate with the responsibilities she alleges that she had." On the basis of its own independent analysis of the applicant's evidence, the RAD agreed with the RPD that the applicant's account of her employment was lacking in credibility for this reason.

[17] Second, the applicant had not provided any corroboration for key elements of her claim when she reasonably could have. The RAD found that there was no reasonable explanation for the absence of supportive evidence from the applicant's father or from her husband, both of whom she had been in contact with shortly before the RPD hearing. Further, like the RPD, the RAD drew a negative inference from the fact that the applicant had not sought medical or psychological treatment or testing to corroborate her claim that she was sexually assaulted in detention. The applicant had provided "no letters or other evidence to corroborate the events as alleged in Djibouti." The RAD found that while it is not necessary to do so, "it is reasonably expected, and its absence detracts from her overall credibility."



[18] Third, the applicant was unable to provide credible explanations for the discrepancies between the employment documents and her narrative or for a discrepancy on the face of the *Bulletin de Paye* she presented. Nor did she have a credible explanation for why she could not provide the municipal address of RTD (an address that was clearly indicated on the business cards she presented).

[19] Finally, the new evidence admitted on appeal did not outweigh these concerns with the applicant's credibility. In particular, the letter from her mother-in-law did not resolve the numerous credibility concerns because it did not say why the police were searching for her husband or when he had disappeared.

[20] In summary, while there were areas in which the RAD agreed with the applicant that the RPD had erred in two respects, the RAD concluded that the RPD's findings were otherwise correct. The RAD stated: "The Appellant's testimony and her corroborating evidence are lacking in credibility. Her inability to provide details on her type of work, and the documents submitted to corroborate her work contain problems that are unreasonable in my view." As a result, the RAD dismissed the appeal and confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

#### IV. STANDARD OF REVIEW

[21] It is well-established that the substance of the RAD's decision (including credibility determinations) is reviewed on a reasonableness standard: see *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; see also *Koffi v Canada (Citizenship and*

*Immigration*), 2016 FC 4 at para 27. That this is the appropriate standard of review has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Reasonableness is now the presumptive standard of review for administrative decisions, subject to specific exceptions “only where required by a clear indication of legislative intent or by the rule of law” (*Vavilov* at para 10). There is no basis for derogating from this presumption here.

[22] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances: see *Vavilov* at para 125. At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review: see *Vavilov* at para 13.

[23] The onus is on the applicant to demonstrate that the RAD’s decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). The court “must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable” (*ibid.*).

V. ANALYSIS

[24] As I will explain, I agree with the applicant that the RAD's decision is marred by reviewable errors in two key respects: first, in rejecting the applicant's claim that she had worked at RTD; and second, in drawing an adverse inference about the applicant's credibility from the absence of evidence to corroborate her claim that she was sexually assaulted.

[25] Looking first at the applicant's account of her employment at RTD, this was a key element of the narrative of events supporting her fear of persecution. Specifically, the applicant alleged that it was things she had said in her role as newsreader that first raised suspicions that she supported the MRD, these suspicions led to her being suspended from RTD, and then a short time later she was arrested and detained on the basis of these same suspicions. The RPD did not believe that the applicant worked at RTD because she did not know the municipal address of the office where she worked and because her account of her responsibilities there was "evasive" and lacking in detail.

[26] The applicant challenged both of these findings at the RAD. With respect to the first, the RAD agreed with the RPD that the applicant's lack of knowledge of the "location" of the RTD building detracted from the credibility of her claim to have worked there. However, like the RPD's, the RAD's analysis simply begs the question. There was no evidence the applicant did not know where RTD was located. Rather, the applicant did not give the address on her employee identification cards when asked where the RTD was located. According to the applicant, this was because municipal addresses are not commonly used in Djibouti; rather, one

would refer to a place by name or description and identify the neighborhood in which it is located. In my view, the RAD failed to address the applicant's argument on appeal that the RPD had simply presumed (in the absence of any evidence) that municipal addresses were used in Djibouti just like they are used in Canada and had therefore erred in doubting the applicant's evidence on this basis. Indeed, far from addressing this argument, it fell into the very same error as the RPD.

[27] With respect to the second finding by the RPD, while the RAD agreed that the word "evasive" was an inapt description of the applicant's evidence about her duties, it nevertheless agreed with the RPD that the applicant's "testimony regarding the type of journalistic work she did is not commensurate with the responsibilities she alleges she had." The RAD reasonably determined that the applicant's account of her responsibilities was very basic. The problem, however, is that, apart from the applicant's account, there is no evidence in the record showing what the responsibilities of a newsreader at RTD would have been that could be used to measure the adequacy of the applicant's account. Put another way, there was no evidence suggesting that the applicant's responsibilities would not have been as basic as she described. In the absence of such evidence, the RAD's assessment was based on its own assumptions about what being a newsreader for RTD entailed. This is not a reasonable basis on which to reject the applicant's account and to find, as a result, that the applicant had not established that she had held the position of newsreader at RTD.

[28] Finally in this regard, the respondent submits that there were sufficient differences between the applicant's description of her work in her BOC narrative and her testimony to

warrant the adverse inference that was drawn. The RAD did not expressly rely on this factor in its decision. In any event, I do not agree that the minor differences between the two justify an adverse finding as to the applicant's credibility.

[29] Turning to the applicant's allegation that she was sexually assaulted while in detention, this too was an important part of the narrative on which her claim for protection rested.

However, the RAD determined that while it is not "necessary" to produce corroboration for this allegation, in this case "it is reasonably expected" and the absence of corroboration "detracts from [the applicant's] overall credibility." In my view, this determination is unreasonable for at least two reasons.

[30] First, the validity of the inference the RAD draws – that the applicant's failure to seek or obtain medical or psychological evidence to corroborate the allegation of sexual assault detracts from her credibility – depends on a myth or stereotype about how victims of sexual assault will behave that has long been discredited in Canadian law – namely, that genuine victims of sexual assault will seek out medical or psychological assessment or treatment. In *R v D(D)*, [2000] 2 SCR 275, Major J held for the majority that that "there is no inviolable rule on how people who are the victims of trauma like a sexual assault will behave" (at para 65). The RAD presumes the contrary. While *D(D)* is a criminal case, the important insight it articulates is equally applicable here. The RAD's reliance on a discredited myth or stereotype leaves its determination lacking internal rationality: see *Vavilov* at para 104.

[31] Second, the significance of the Supreme Court’s insight for the refugee determination context is demonstrated by and put into practice through the IRB’s *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution*. Among many other things, these guidelines emphasize the importance of avoiding unfounded generalizations and considering refugee claims within the social, cultural, religious and economic context in which the claimant finds herself. The guidelines also caution against the risks of cross-cultural misunderstandings. Thus, the guidelines note: “Women from societies where the preservation of one’s virginity or marital dignity is the cultural norm may be reluctant to disclose their experiences of sexual violence in order to keep their ‘shame’ to themselves and not dishonour their family or community [footnote omitted].”

[32] In the present case, the RAD quotes this passage from the guidelines but then simply ignores it. After noting that the applicant “did not provide any medical or psychological corroboration from Djibouti or since she has been in Canada,” the RAD quotes the applicant’s explanation for why this was so – namely, when she was released from detention she remained in hiding because she was fearful. But this is not all the applicant said about the sexual assault and its impact. She also stated later in her evidence that “women being raped is shame in our tradition.” This evidence directly engaged the precise concern highlighted by the guidelines.

[33] This is not a case where the applicant, on her own account, did seek treatment after the sexual assault but then unaccountably fails to provide independent evidence of this (e.g. the records of the treatment). Rather, the material issue was why the applicant had not sought treatment in the first place. The RAD does not address this question in light of the evidence

bearing on it or the guidelines when it determined that corroborative evidence was “reasonably expected” in this case. For this additional reason, the RAD’s adverse determination with respect to the applicant’s credibility because she did not provide corroboration for her account of being sexually assaulted is unreasonable.

[34] In fairness, counsel for the respondent did not attempt to defend the RAD’s reasoning in this regard. Instead, she submitted that the RAD’s concern related to the absence of corroborative evidence from the applicant’s father and husband regarding, respectively, the applicant’s claims that her father had also been suspended from RTD and that the police were looking for the applicant and her claim to have married her husband in secret shortly after she was released from detention. While I agree that this was part of the RAD’s concern, I cannot agree that its concern about the absence of corroboration was limited to this. The RAD also expressly drew an adverse inference about the applicant’s credibility from the absence of medical or psychological evidence to corroborate her claim that she had been sexually assaulted. For the reasons I have just set out, this was an unreasonable inference for it to draw.

[35] The applicant’s claim for refugee protection is not without its difficulties. However, it is the RAD’s role, not mine, to evaluate the merits of that claim. The errors I have identified in the RAD’s reasoning are not peripheral considerations or minor missteps in its decision to confirm the RPD’s rejection of the refugee claim. On the contrary, they go to the heart of the RAD’s analysis of key elements of the evidence on which the applicant’s claim for protection was based. In my view, they are sufficiently serious that the decision as a whole “cannot be said to exhibit

the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). As a result, this matter must be reconsidered by the RAD.

[36] Finally, I note for the sake of clarity that the applicant also took issue with the RAD’s adverse assessment of some of the documents she provided to corroborate her claim to have worked at RTD. Since it is not necessary to address these objections to dispose of this application, the fact that I have not done so should not be taken as signalling that I consider the RAD’s assessment to be reasonable. What, if anything, should be made of these documents will be for the RAD to determine when it considers the matter again. The same is true of the letter from the applicant’s mother-in-law that was admitted by the second RAD panel but then given little weight in the assessment of the claim.

## VI. CONCLUSION

[37] For these reasons, the application for judicial review is allowed. The decision of the Refugee Appeal Division dated January 10, 2020, is set aside and the matter is remitted for reconsideration by a different decision maker.

[38] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.



**JUDGMENT IN IMM-792-20**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed.
2. The decision of the Refugee Appeal Division dated January 10, 2020, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

“John Norris”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-792-20

**STYLE OF CAUSE:** ARAKSAN ISMAEL IBRAHIM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 25, 2021

**JUDGMENT AND REASONS:** NORRIS J.

**DATED:** DECEMBER 14, 2021

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